IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

TAX APPEAL No.77 of 2003
TO
TAX APPEAL No.79 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE D.A.MEHTA Sd/-
and
HON'BLE MS.JUSTICE H.N.DEVANI Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

COMMISSIONER OF INCOME TAX-III

Versus

SHRI MANOHARSINHJI P. JADEJA

Appearance:
MR DD VYAS for M/S.VYAS ASSOCIATES for Petitioner No. 1
MR KAMAL TRIVEDI, AAG with MR RK PATEL AND MR TEJAS BAROT for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE D.A.MEHTA
and
HON'BLE MS.JUSTICE H.N.DEVANI

Date of decision: 10/12/2004

COMMON ORAL JUDGEMENT

(Per : HON'BLE MR.JUSTICE D.A.MEHTA)

1. These appeals have been admitted by an order dated 08-04-2003 on the following two questions of law, which are common for all the three years :-

"1. "Whether on the facts and circumstances of the case, the Tribunal is right in holding that the cost of acquisition of the asset land is nil considering the provisions of Sec.49(1)(iii)(a) read with Explanation thereto and that the provisions of Sec.55(i)(b) as also Sec.55(2)(b)(ii) ?"

2. "Whether the price of the land is chargeable under the had "Capital Gains"?"

2. The learned counsel are agreed that question No.1 requires to be re-framed in light of an inadvertent error which has crept while framing the question at the time of admission of the tax appeals. Accordingly, question No.1 is re-framed as under :-

"Whether on the facts and circumstances of the case, the Tribunal is right in holding that the cost of acquisition of the asset land is nil considering the provisions of Sec.49(1)(iii)(a) read with Explanation thereto as also Sec.55(2)(b)(ii) ?"

3. The Assessment Years involved are 1989-90, 1990-91 and 1991-92. The Tribunal has passed a consolidated order dated 19-08-2002 for all the three years, wherein it has followed its own order in assessee's own case for Assessment Year 1983-84. It is common ground between the parties that the facts as found by the Tribunal for Assessment Year 1983-84 would apply to the years under consideration and there are no distinguishing features. In fact the learned counsel for the parties have addressed common arguments in these three appeals and I.T.R. No.225 of 1991.

4. As can be seen from the order of the Tribunal, it has relied on its own order for Assessment Year 1983-84 and no independent reasons are assigned. In view of the aforesaid facts and circumstances of the case obtaining for the three years under consideration, question No.1 is answered in the affirmative i.e. in favour of the assessee and against the Revenue while question No.2 is answered in the negative i.e. in favour of the assessee and against the Revenue for the reasons assigned in our judgment rendered on 09/10-12-2004 in I.T.R. No.225 of 1991 in assessee's own case.

5. Accordingly, all the three tax appeals are dismissed. There shall be no order as to costs.

Registry to place a copy of this order in all connected matters.

Sd/- Sd/-

[D.A.MEHTA,J] [H.N.DEVANI,J]

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'Bhavesh'